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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91200183
Party	Plaintiff The Worlds Pageants, LLC
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Submission	Motion to Dismiss - Rule 12(b)
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Date	08/08/2013
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

THE WORLDS PAGEANTS, LLC and)	
CAMILA PRODUCTIONS LTD)	
Opposer,	)	Opposition No. 91,200,183
)	
	)	For: "MISS G-STRING
	)	INTERNATIONAL"
)	
v.	)	Serial No. 77/753,000
	)	Published December 7, 2010
)	
MISS G-STRING INTERNATIONAL, LLC)	
Applicant.)	
and;		
WILLIAM EADIE,)	
Petitioner,	)	Cancellation No. 92,055,838
)	
	)	For: "MISS NUDE
	)	INTERNATIONAL"
)	
v.	)	Registration No. 2,037,202
	)	Registered on February 11, 1997
)	
	)	and;
THE WORLDS PAGEANTS, LLC and)	
CAMILA PRODUCTIONS LTD)	
Registrant.	)	for: "MISS NUDE WORLD"
)	
	)	Registration No. 3,039,826
	)	Registered on January 10, 2006
 COMMISSIONER OF TRADEMARKS 2900 Crystal Drive Arlington, VA 22202-3513		

REGISTRANT'S MOTION TO DISMISS THIRD AMENDED PETITION TO CANCEL

Pursuant to the provisions of Rule 12(b)(6) of the Federal Rules of Civil Procedure and Section 503 of the Trademark Trial and Appeal Board Manual of Procedure, Registrant The Worlds Pageants, LLC ("TWP" or "Registrant"), by and through its attorney, Thomas T. Aquilla, hereby respectfully moves the Trademark Trial and Appeal Board to dismiss Petitioner William Eadie's ("Eadie" or "Petitioner") Third Amended Petition to Cancel for failure to state a claim upon which relief can be granted. This motion is based on the fact that Registrant's Reg. Nos. 2,037,202 and 3,039,826 are registered and incontestable, the fact that Petitioner fails to recite one of the grounds specified in Trademark Act § 14(3) or 14(5), 15 U.S.C. § 1064(3) or 15 U.S.C. § 1064(5) on which relief may be granted, and the fact that Petitioner's allegations in support of damage lack a reasonable basis in fact.

1. FACTS

In support of this Motion, Registrant, The Worlds Pageants, LLC shows as follows:

1. Registrant, The Worlds Pageants, LLC, is the assignee of record for U.S. Registration No. 2,037,202 issued February 11, 1997 for the mark "MISS NUDE INTERNATIONAL" and U.S. Registration No. 3,039,826 issued January 10, 2006 for the mark "MISS NUDE WORLD" for entertainment services in the nature of promoting and conducting beauty pageants in International Class 041. The registrations are valid, incontestable and enforceable.

2. In the Third Amended Complaint, Petitioner fails to recite one of the grounds specified in Trademark Act § 14(3) or 14(5), 15 U.S.C. § 1064(3) or 15 U.S.C. § 1064(5) on which relief may be granted.

3. Petitioner fails to establish its requisite burden of ownership necessary for standing under 37 C.F.R. § 3.73(b) and Rule 12(b)(6).

2. THE LAW

Motions to dismiss for failure to state a claim upon which relief can be granted in Board proceedings are governed by Rule 12(b)(6) of the Federal Rules of Civil Procedure and TBMP Section 503. A motion to dismiss for failure to state a claim is a test solely of the legal sufficiency of a complaint. *See, for example, Advanced Cardiovascular Systems Inc. v. SciMed Life Systems Inc.*, 988 F.2d 1157, 26 U.S.P.Q.2d 1038, 1041 (Fed. Cir. 1993) (**Rule 12(b)6 challenges the legal theory of the complaint not the sufficiency of the evidence that might be adduced.**) (emphasis added). The purpose of the rule is to allow the court to eliminate actions that are fatally flawed in their legal premises and destined to fail, and thus to spare litigants the burdens of unnecessary pretrial and trial activity. *Neitzke v. Williams*, 490 U.S. 319, 326-27 (1989).

TBMP § 503.02 states: "To survive a motion to dismiss, a complaint must "state a claim to relief that is plausible on its face." In order to withstand such a motion, a complaint need only allege such facts as would, if proved, establish that the plaintiff is entitled to the relief sought, that is, that: (1) the plaintiff has standing to maintain the proceeding, and (2) a valid ground exists for denying the registration sought (in the case of an opposition), or for canceling the subject registration (in the case of a cancellation proceeding). *See, for example, Young v. AGB Corp.*, 152 F.3d 1377, 47 USPQ2d 1752, 1754 (Fed. Cir. 1998). In deciding such a motion, the standard used by the TTAB is to accept all of the plaintiff's well-pleaded allegations as true, and the complaint must be construed in the light most favorable to the plaintiff. *See Young v. AGB Corp., supra.*

TBMP § 309.03(a)(2) Elements of Complaint – In General

"[A] petition to cancel must include (1) a short and plain statement of the reason(s) why petitioner believes it is or will be damaged by the registration sought to be cancelled (i.e., petitioner's standing to maintain the proceeding -- see TBMP § 303.03 and TBMP § 309.03(b)) and (2) a short and plain statement of the ground(s) for cancellation."

TBMP § 303.03 Meaning of the Term "Damage"

"The term "damage," as used in Trademark Act § 13 and Trademark Act § 14, 15 U.S.C. § 1063 and 15 U.S.C. § 1064, concerns specifically a party's standing to file an opposition or a petition to cancel, respectively. A party may establish its standing to oppose or to petition to cancel by showing that it has a "real interest" in the case, that is, a legitimate personal interest in the outcome of the proceeding and a reasonable basis for its belief in damage."

TBMP § 307.02 Petition That Must Be Filed Within Five Years from the Date of Registration

307.02(a) In General:

"[A] petition to cancel filed after the expiration of the five-year period, in the case of such a Principal Register registration, must recite one of the grounds specified in Trademark Act § 14(3) or 14(5), 15 U.S.C. § 1064(3) or 15 U.S.C. § 1064(5)."

3. ARGUMENT

Registrant hereby respectfully moves the Board to dismiss the Third Amended Petition to Cancel pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and TBMP Section 503 on grounds that Petitioner has failed to state a claim upon which relief can be granted. TBMP § 503.02 states that "To survive a motion to dismiss, a complaint must state a claim to relief that is

plausible on its face." In deciding such a motion, the standard used by the TTAB is to accept all of the plaintiff's well-pleaded allegations as true, and the complaint must be construed in the light most favorable to the plaintiff. *See Young v. AGB Corp., supra.*

Petitioner's Third Amended Petition to Cancel cannot survive Registrant's Motion to Dismiss, because the Third Amended Petition to Cancel (as with the three previous versions) clearly does not "state a claim that is plausible on its face," as required by TBMP § 503. More particularly, Petitioner's complaint does not recite any legal grounds for cancellation of Registrant's marks. Rather, it merely alleges, without any supporting evidence, that Petitioner owns an interest in Registrant's marks. Petitioner's complaint does not recite with particularity any facts that if true would constitute grounds for cancellation. Moreover, even if the facts alleged by Petitioner were true, Petitioner would not be entitled to the requested relief. Petitioner's sole request for relief is the conveyance of the subject Registrations to Eadie. The TTAB does not have jurisdiction to effect Petitioner's requested change in title of the subject Registrations, as the Board has noted previously in this case. Therefore, it is respectfully submitted that Petitioner has failed to state a claim upon which relief can be granted and the Board should dismiss the Third Amended Petition to Cancel with prejudice.

(3.1)

Petitioner Fails to Recite a Ground on Which Relief may be Granted.

Because of the incontestable status of Registrant's marks, Petitioner must recite one of the grounds specified in Trademark Act § 14(3) or 14(5), 15 U.S.C. § 1064(3) or 15 U.S.C. § 1064(5) on which relief may be granted. Neither of these grounds, as required by TBMP § 309.03(a)(2), is mentioned in the Petitioner's Third Amended Petition to Cancel. Petitioner's complaint does not recite with particularity any facts that if true would constitute grounds for cancellation.

Moreover, even if the facts alleged by Petitioner were true, Petitioner would not be entitled to the requested relief. This is not the first time Petitioner has raised this issue and the Board has already ruled in this case:

"In any event, a finding of fraud could not result in title in the registration being transferred to Eadie, as Eadie has requested in his prayer for relief."

Board Order June 29, 2013, page 13, lines 6-8.

"The Board is an administrative tribunal of limited jurisdiction that lacks jurisdiction to enforce a judgment for monetary damages. See generally Person's Co. v. Christman, 900 F.2d 1565, 14 USPQ2d 1477 (Fed. Cir. 1990) (Board's function is to determine whether there is a right to secure or to maintain a registration); Luehrmann v. KwikKopy Corp., 2 USPQ2d 1303 (TTAB 1987) (Board has no authority to award fees, costs or monetary damages)."

Board Order June 29, 2013, page 11 last line to page 12, line 7.

Because the Third Amended Petition to Cancel does not recite one of the grounds specified in Trademark Act § 14(3) or 14(5), 15 U.S.C. § 1064(3) or 15 U.S.C. § 1064(5) on which relief may be granted, and no other valid ground for cancellation of the subject registrations is recited in the Third Amended Petition to Cancel, Petitioner has therefore failed to recite a ground on which relief may be granted.

(3.2)

Petitioner Fails to Show it Has a "Real Interest" in the Case.

Furthermore, the Third Amended Petition to Cancel lacks a statement of the reasons why Petitioner believes it is or will be damaged by the registrations sought to be cancelled. Petitioner alleges that Eadie is the lawful owner of the subject registrations via a default judgment for money damages, which Eadie obtained from Bell. Eadie obtained this judgment from Bell, after Registrant initiated Opposition No. 91,200,183, solely as a means to harass Registrant, delay the Opposition and increase Registrant's enforcement costs. The Board has already ruled on this issue:

"However, the Board noted that the judgment at issue was entered against R&D and Cardoso for monetary damages only; that judgment does not expressly assign any intellectual property rights."

Board Order June 29, 2013, footnote 3, third paragraph.

Thus, the Third Amended Petition to Cancel fails to "state a claim that is plausible on its face," as required by TBMP § 503 and § 303, and thus fails to establish that Petitioner has a real interest in the case. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) (plausibility standard applies to all federal civil claims).

Furthermore, under 37 C.F.R. § 3.73(b), in order to request or take action in a trademark matter, the assignee must establish its ownership by submitting a signed statement identifying the assignee accompanied by either a chain of title (*e.g.*, copy of executed assignment) or a statement specifying where documentary evidence of chain of title may be found. Additionally, under 37 C.F.R. § 3.73(b), the submission establishing ownership must show that the person signing the submission is a person authorized to act on behalf of the assignee. However, Petitioner Eadie

has not submitted either a chain of title or a statement specifying its location. It is therefore respectfully submitted that Petitioner has not established standing to assert ownership of the subject Registrations through a chain of title and therefore has failed to show that it has a real interest in the case. Petitioner has therefore failed to recite a ground on which relief may be granted.

(3.3)

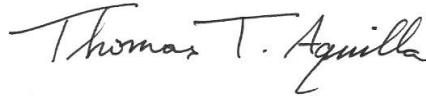
Petitioner's Requested Relief Cannot be Granted by the TTAB.

The relief requested in the Third Amended Petition to Cancel is not a remedy available to the Petitioner in the TTAB. In the complaint, Petitioner requests the Board to effect a change in the legal title to Petitioner's name. See Requested Relief, last paragraph of Third Amended Petition to Cancel. However, the Board's jurisdiction is limited to the power to determine only the right to register marks. See Sections 17, 18, 20 and 24 of the Act of 1946, 15 U.S.C. §§ 1067, 1068, 1070 and 1092 and TBMP § 102. As quoted above, the Board has already ruled on this issue in this case, clearly stating that the Board cannot grant the requested relief. Therefore, it is respectfully submitted that Petitioner has failed to recite a ground on which relief may be granted.

4. CONCLUSION

Because Petitioner has failed to state a claim on which relief may be granted under Rule 12(b)(6) of the Federal Rules of Civil Procedure and TBMP § 503, failed to show a real interest in the case and seeks a remedy that is unavailable, Registrant respectfully moves the Board to dismiss the Third Amended Petition to Cancel with prejudice and terminate the cancellation proceeding in Registrant's favor.

Respectfully Submitted:

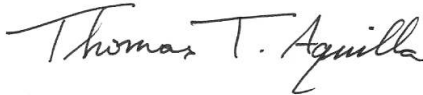


Dated: **August 8, 2013**

By: /Thomas T. Aquilla/
Registration No. 43,473
(603) 253-9474
Aquila Patents & Marks PLLC
221 Coe Hill Road
Center Harbor, NH 03226

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been mailed via the U.S. Postal Service via First Class Mail, in an envelope addressed to Counsel for Petitioner, Luke Charles Lirot, 2240 Belleair Road, Suite 190 Clearwater FL 33764, on **August 8, 2013**.



Thomas T. Aquilla, Esq.